

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re C.H., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.H.,

Defendant and Appellant.

B295048

(Los Angeles County
Super. Ct. No. 18CCJP04615)

APPEAL from an order of the Superior Court of
Los Angeles County, Emma Castro, Referee. Affirmed.

Jesse McGowan, under appointment by the Court of
Appeal, for Defendant and Appellant M.H.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Stephen D. Watson, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

The Los Angeles County Department of Children and Family Services (the Department) detained minor C.H. from Mother and appellant M.H. (Father) due to their abuse of prescription and illicit drugs. At disposition, the trial court removed C.H. from Father's physical custody and returned the child to Mother. The court granted Father overnight visitation with C.H. at the home of the paternal grandparents to be arranged in consultation with Mother, from whom Father was separated but with whom he maintained a cordial relationship. The court also provided Father could enjoy unmonitored day visits with C.H. once he underwent a medical assessment and obtained a primary care physician.

Father contends the visitation order constitutes an improper delegation of authority to Mother and the Department because it effectively grants them the power to decide whether visitation with Father will occur.

We find no error and affirm.

FACTS AND PROCEDURAL BACKGROUND

In July 2018, the Department filed a petition pursuant to Welfare and Institutions Code section 300 alleging C.H. was at risk of harm due to Mother's and Father's abuse of prescription and illicit drugs. The court declared Father the presumed father and ordered C.H. detained with Father's parents (C.H.'s paternal grandparents). The court granted Father two monitored visits per week for two hours each, and gave the Department discretion to liberalize the visits.

At the jurisdiction and disposition hearing in December 2018, the parents waived their trial rights and the court sustained an amended version of the petition. The court removed

C.H. from Father's custody and returned C.H. to Mother's care on the condition that Mother reside with her mother (C.H.'s maternal grandmother) and that Mother continue receiving drug treatment.

Father requested unmonitored and overnight visitation with C.H. The court granted Father overnight visitation with C.H. at the paternal grandparents' home "as arranged between" Father and Mother. Because Father testified he had been using prescription opioids for seven years to treat chronic pain from prior sports injuries, the court determined that Father's day visits could only become unmonitored once he was under the care of a primary care physician.

Father timely appealed.

DISCUSSION

Father's sole argument on appeal is that the court's failure to specify a minimum amount of visitation constitutes an improper delegation of judicial discretion. The Department responds that Father forfeited his challenge to the visitation order by failing to raise the issue below and that the court was not required to specify a minimum amount of visitation. We agree with the Department.

The record reflects that Father asked for unmonitored day visits and overnight visitation with C.H. The court granted overnight visits and set a reasonable condition for Father to meet before the court would allow unmonitored day visits. Father did not ask the court for a certain number of visits or make any other requests about his visitation with C.H. He has therefore forfeited the claim on appeal. (See *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686 [failure to assert juvenile court

improperly delegated visitation authority to parole officer waives issue on appeal].)

Forfeiture aside, a visitation order is typically reviewed for abuse of discretion. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.) Father concedes that in cases involving ongoing dependency jurisdiction, the weight of authority holds that visitation orders need not specify the frequency and length of visits. “In fashioning a visitation order, the court may delegate the responsibility of managing the details of visitation—including time, place, and manner—but not the decision whether visitation will occur.” (*In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1135.) “‘Such matters as time, place and manner of visitation do not affect the defined right of a parent to see his or her child and thus do not infringe upon the judicial function.’” (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374.)

Father nonetheless argues the visitation order in his case allows Mother and the Department to decide whether his visits will occur. His reliance on *In Shawna M.* to support this assertion is misplaced. There, the court directed visitation as “‘approved by’” the agency. (*In re Shawna M.* (1993) 19 Cal.App.4th 1686, 1688 (*Shawna M.*)). The child was suffering from post-traumatic stress disorder and receiving treatment from a psychiatrist. (*Id.* at p. 1689.) The agency’s social worker was reluctant to state when commencement of visitation with mother would be in the child’s best interest, so it was recommended the agency have the discretion to “‘arrange and approve’” visitation. (*Id.* at p. 1689.) Over objections by the mother, the court adopted the agency’s recommendation for visitation. (*Id.* at p. 1690.) The Sixth District determined this was an improper delegation of judicial authority because it gave

Mother no guidance as to the circumstances and frequency of visitation. (*Ibid.*)

Here, unlike *Shawna M.*, the trial court's visitation order did not leave Father with no guidance whatsoever as to his visitation. The record reflects Father had already been visiting consistently with C.H. for three to four hours every Saturday and Sunday at his own mother's house without incident. Additionally, the Department encouraged Father to visit C.H. as often as he could and to spend a lot of time with the child. The record also reflects that Father and Mother had "somewhat of an amicable relationship, at least as far as visitation with the child," and Father's attorney stated Mother was open to working out a visitation schedule with Father.

We recognize the court in *Shawna M.* noted courts " 'should determine whether there *should* be any right to visitation and, if so, the frequency and length.' " (*Shawna M., supra*, 19 Cal.App.4th at p. 1690, italics added, quoting *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) Shortly after *Shawna M.*, however, our courts clarified that, ultimately, a trial court's visitation order "*need not* specify the frequency and length of visits." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1009, italics added.) A visitation order only violates the statutory scheme governing visitation and the separation of powers doctrine when the trial court delegates "the absolute discretion to determine *whether* any visitation occurs." (*In re Moriah T., supra*, 23 Cal.App.4th at p. 1374, italics added.) Accordingly, our courts have held that a "bare bones" order for "reasonable visitation" that fails to provide guidance as to the frequency or circumstances of visitation does not constitute an unlawful delegation of power. (*In re Christopher H.*, at p. 1011.) Nor does

an order that provides only for “regular” visitation between parent and child and grants the agency discretion to determine the time, place, and manner of the visits. (*In re Moriah T.*, at p. 1374.)

Father’s visitation order does not delegate the authority to Mother or the Department to decide whether he may visit C.H. Nor does it place an upper or lower limit on the number of visits Father and Mother may arrange. Neither Mother nor the Department was given the authority to decide whether or under what circumstances Father may visit. The trial court obviously contemplated that Father and Mother would continue to collaborate on arranging visitation details just as they had before the dispositional order was entered. The order provides specifically that Father may have overnight visits at Father’s parents’ home when the patents are present, and that unmonitored day visits may occur once Father has a medical assessment and provides the Department with his primary care physician’s contact information. Should Mother or the Department interfere with Father’s visitation rights (for example, by setting their own minimum or maximum number of visits), they would be in violation of the court’s order and Father could pursue remedial action through the trial court. Unlike *Shawna M.*, the order is not silent as to when Father’s visits may commence. And, the order provides far more detail and guidance than those in *In re Christopher H.* and *In re Moriah T.*, which merely granted reasonable and regular visitation to the parents.

DISPOSITION

The visitation order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.

We concur:

BIGELOW, P. J.

WILEY, J.